

D.B. CIVIL SPECIAL APPEAL (W) NO.284/2005

Suresh Chandra Sharma Vs. RSRTC & Anr.

Date : 19.03.2007

PRESENT

HON'BLE MR. JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE BHANWAROO KHAN

Mr. Kuldeep Mathur for the petitioner.

Mr. Sangeet Lodha for the respondents.

Heard learned counsel for the parties.

The appellant was an employee of respondent-Corporation. He was served with a charge sheet on 21st July, 2000 that while he was on board in the Vehicle of the Corporation as Conductor on 7.6.2000, he was not found with the badge and licence and that 22 passengers were found without ticket from whom money was collected which was also in the excess of the money that could have been recovered by issue of tickets. Additional amount was seized and balance was returned to the incumbent.

The charge of taking the passengers without ticket was denied. It was stated that after the commencement of journey from Bhilwara to Mandal Circle 20-22 passengers came on board. The distance between Bhilwara and Mandal Circle is 8 to 10 kilometers which takes 10 minutes and so much time taken in collecting and giving tickets. It was not a case of carrying the passengers without ticket. He also gave details of Rs.127/- which was alleged to have been found in excess of the passengers fare. No reply was submitted to the charge of he being found without badge and licence.

The enquiry officer found that the charges of carrying passengers without issuing ticket and charging of excess fare are not proved. However, the incumbent was found guilty of not completing the record and not wearing proper dress and badge.

Notice to show cause against the finding recorded by the Enquiry Officer was issued by the

Disciplinary Authority. By order dated 30.12.2003, the Disciplinary Authority found that all charges proved in enquiry and the penalty of Rs.22,000/- for carrying passengers without ticket, Rs.50/- for travelling without uniform were imposed. It will be apposite for the present purpose to reproduce the order of the Managing Director:-

राजस्थान राज्य पथ परिवहन निगम, चित्तौड़गढ़ आगार
क्र.कमुप्र/वि/पी2/2003/ दिनांक

-: जांच निर्णय :-

श्री सुरेश शर्मा पुत्र श्री मोहन शर्मा, हाल परिचालक, चित्तौड़गढ़ को कार्यालय के पत्र संख्या 1964 दिनांक 21.7.2000 के द्वारा दोषारोपण पत्र जारी किया गया। इन आरोपों की विभागीय जांच श्री आर.के. शर्मा रिटायर्ड आर.वितर सलाहकार, मुख्यालय जयपुर के द्वारा पूर्ण जांच की गई, जांच प्रतिवेदन प्रस्तुत किया है जिसमें आरोपित के विरुद्ध लगाये गये आरोप सिद्ध पाये गये। आज दिनांक 30.12.2003 को इस जांच के शीघ्र निस्तारण हित आरोपित द्वारा प्रस्तुत प्रार्थना पत्र के अनुसार आरोपित ने उसके विरुद्ध लगाये गये आरोप स्वीकार किये हैं। ऐसी स्थिति में आरोपित की प्रार्थना पर व्यक्तिगत सुनवाई आज दिनांक 30.12.2003 को की गई।

मैं मुख्य प्रबन्धक, राजस्थान राज्य पथ परिवहन निगम, चित्तौड़गढ़ आगार आरोपित की प्रार्थना पर जांच पत्रावली में उपलब्ध जांच प्रतिवेदन तथा अन्य सम्बन्धित दस्तावेजों का भलीभांतिपूर्वक अवलोकन/अध्ययन कर तथा आरोपित व्यक्तिगत सुनवाई में दिये कथन को स्वीकार करते हुए आरोपित श्री सुरेश शर्मा पुत्र श्री मोहन लाल हाल परिचालक, चित्तौड़गढ़ आगार के विरुद्ध जारी आरोप पत्र सं. 1964 दि. 21.7.02 में निम्न दण्ड से दण्डित करता हूँ :-

1. निगम के स्थाई आदेश 1965 की धारा 36 (3) के तहत आरोपित के निलम्बनकाल का शेष वेतन निगम हित में जप्त करता हूँ।
2. निगम के स्थाई आदेश 1965 की धारा 36(3) के तहत आरोपित को 22,000/- रुपये बतौर बिना टिकिट की शास्ति एवं बिना वर्दी के 50/- (पचास रुपये) कुल 22,050/- रुपये (बाइस हजार पचास रुपये) के अर्थ दण्ड से दण्डित करता हूँ।

रसीद सं. 20668 दिनांक 30.12.2003 के द्वारा उक्त दण्ड राशि

22,050/- रूपये आरोपित ने जमा कराई।

क्रमांक: 417

मुख्य प्रबन्धक
दिनांक : 30.12.03

प्रतिलिपि:-

1. प्रबन्धक, लेखा, रारापपनिगम, चित्तौड़गढ़।
2. संस्थापन शाखा, परिचालक, वर्ग, रारापपनिगम, चित्तौड़गढ़।
3. श्री सुरेश शर्मा पुत्र श्री मोहन लाल हाल परिचालक, द्वारा प्रबन्धक।
4. निजी/आदेश पत्रावली।

मुख्य प्रबन्धक
चित्तौड़गढ़

A perusal of the aforesaid order goes to show that the Managing Director clearing recorded that according to the enquiry report the charges levelled against the incumbents are found proved. He also referred to the acceptance of charge dated 30.12.2003. The hearing took place on 30.3.2003 only. The order was passed on that date and curiously enough the order in itself records deposit of penalty amount suggesting that the penalty was levied and recovered before the order was passed.

This order was challenged by way of writ petition before this Court. The learned Single Judge has dismissed the writ petition vide judgment under appeal inter alia on the ground that since the punishment has

been passed on the basis of admission of guilt in writing and the show cause notice was given on 6.9.2004 the theory of admission of guilt under coercion is not acceptable and since the order has been passed on 30.12.2003 it does not call for interference.

Having perused the material on record and about correctness of which there is no dispute, we are of the opinion that the punishment order in relation to charge of carrying passengers without issue of ticket could not have been imposed by the Disciplinary Authority.

We have already noticed above that the enquiry officer has not found the incumbent guilty of the grievous charge of carrying passengers without ticket and collecting excess amount but has found him guilty of merely not completing the record before commencing the journey and that he was found guilty of not being in uniform and not wearing badge. A grievous charge of taking money without issuing ticket and carrying passengers without ticket was not found proved

in the circumstances. Therefore, the order of punishment which recorded all the charges proved only on the basis of finding reached by the Enquiry Officer was patently founded on non-existing material. Reference to the fact that the incumbent has accepted the charges proved against him is basically on erroneous assumption about finding by Enquiry Officer.

When the incumbent has denied the charges and he has participated in enquiry and was exonerated of the grievous charges levelled against him by the enquiry officer, there was no occasion for him to have admitted commission of unproved charges during the course of hearing or before hearing in the manner in which it is stated by the learned counsel for the petitioner.

Apparently, the admission contained in Annex.5 could at best be only in response to the show cause notice accompanied with the enquiry report in relation to the charges proved against him. The very fact that the disciplinary authority has assumed that the

charges levelled against the delinquent were proved in the enquiry he also assumed that the delinquent has admitted all charges held proved by the Enquiry Officer during the course of hearing whereas factually that assumption was wholly unfounded. This aspect the delinquent has brought out by his demand of justice that he has never admitted the charges which were not found proved against him.

The another significant fact is that the order of the punishment itself records the deposit of fine imposed upon him before the penalty order was passed. This betrays the fact that the petitioner must have been first asked to deposit the amount of penalty which has been determined by Disciplinary Authority before passing the order, else he was to suffer extreme penalty. Otherwise it is not understandable that if the order was passed on admission how the delinquent could have deposited the amount of penalty before inflicting the punishment. Apparently, the petitioner appellant has not received a fair deal at the hands of the management while in the matter of imposing the punishment on the

basis of report of the enquiry officer as the management proceeded on wholly non-existent ground that enquiry officer has found that all charges levelled against the delinquent have been proved.

The fact that the petitioner has been required to deposit the amount of fine imposed before passing of the order also betrays pressure being used against the petitioner either to deposit certain amount or face the consequences otherwise it is not possible in the course of conduct for any delinquent to have known and deposit the amount of penalty before the order of penalty was passed and communicated to him, if it was in fact passed after hearing the delinquent and considering his prayers by the disciplinary authority. It appears that the order was foreclosed before hearing the matter and before considering any request by the petitioner-appellant.

Be that as it may, it is against all course of ordinary conduct of human behaviour that a delinquent would admit the charges levelled against him of which

he has been exonerated by Enquiry Officer even before hearing by the disciplinary authority. Therefore, the hearing after issuing show cause notice along with the enquiry report appears to be only a formal exercise by the respondents.

In these circumstances, the punishment imposed for charges not proved before Enquiry Officer and about which no finding was recorded by the disciplinary authority himself on merit, cannot be sustained and the punishment to that extent is quashed. The appeal is allowed to the extent as stated above. The amount of fine deposited by the petitioner-appellant for unproved charge will be refunded to him within two months.

No costs.

[BHANWAROO KHAN], J.

[RAJESH BALIA], J.

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